



REPUBLIC OF KENYA



**Guo v Beijing Zhongji Jingu Integrated Housing Technology Co Limited & 2 others
(Cause E328 of 2023) [2023] KEELRC 2507 (KLR) (3 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2507 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E328 OF 2023
NZIOKI WA MAKAU, J
OCTOBER 3, 2023**

BETWEEN

JUN GUO CLAIMANT

AND

**BEIJING ZHONGJI JINGU INTEGRATED HOUSING TECHNOLOGY CO
LIMITED & 2 OTHERS RESPONDENT**

RULING

1. In response to the Claimant's Application dated 23rd May 2023, the 1st and Respondents/Applicants filed a Notice of Preliminary Objection dated 8th June 2023 on the grounds that this Honourable Court lacks jurisdiction to hear the said application as it is a specialised Court established pursuant to Article 162(2)(a) of the *Constitution* of Kenya and has limited jurisdiction to determine disputes relating to employment and labour relations. That the Environment and Land Court (ELC) that is established pursuant to Article 162(2) of the *Constitution* is vested with exclusive jurisdiction on matters relating to the use and occupation of, and title to, land. Other grounds were that the Claimant's Application is bad in law, vexatious and an abuse of the court process and that the Court Order issued on 30th May 2023 be vacated as this Honourable Court does not have jurisdiction to entertain this claim.
2. The Preliminary Objection was canvassed by way of written submissions. The 1st and 2nd Respondents/Applicants submitted that it is trite law that where the question of jurisdiction is raised, the court must first and foremost investigate and establish whether it has the requisite jurisdiction to hear and determine the matter. That the Court of Appeal in the case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR stated that jurisdiction is everything without which a court of law acts in vain.
3. It was the 1st and 2nd Respondents' submission that the Claimant had sought in his Application before this Court for orders of inhibition restraining further dealings, registration and transaction and for an order of inhibition to be registered over parcel LR No 1/462/ IR No. 16611/1 (Original Number



1/214 and part of 1/214) situated in Nairobi Municipality (Upper Hill Estate), pending hearing and determination of the Claimant's Notice of Motion dated 19th April 2023. That the P.O. herein thus challenged the jurisdiction of this Court to issue inhibition orders relating to any land and that the Claimant's Application ought to have been filed before the ELC, which is the court competent to hear and determine all matters relating to environment and land. They cited the case of *Samuel Kamau Macharia v Kenya Commercial Bank Limited & 2 others* [2012] eKLR in which the Supreme Court stated that a court of law can only exercise jurisdiction as conferred on it by law and that where the *Constitution* exhaustively provides for the jurisdiction of a Court of law, it must operate within the constitutional limits. They further submitted that in light of the provisions of sections 43 and 44 of the *Interpretation and General Provisions Act* (Chapter 2, Laws of Kenya), once a Judge has been appointed to a specific Court, he or she lacks power to exercise a jurisdiction which the *Constitution* has reserved to another Superior Court. That this position was affirmed in the decision of the Supreme Court in *Republic v Karisa Chengo & 2 others* [2017] eKLR and which Court further observed that although the High Court and the specialized Courts are of the same status, they are different Courts and that a reading of the statutes regulating the specialized Courts brings forth a logical inference that their jurisdictions are limited to the matters provided for in those statutes.

4. It was the 1st and 2nd Respondents' submission that based on the foregoing, the threshold of a preliminary objection established in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696 as it consisted of pure points of law, had merit and would dispose the Claimant's Application in question. They invited this Honourable Court to allow their Preliminary Objection and down its tools for want of jurisdiction and that the Orders issued on 30th May 2023 be consequently vacated.
5. The Claimant's submission was that the main issue for determination is whether this Honourable Court has jurisdiction to hear and determine the Claimant's Application dated 23rd May 2023. He based his submissions on jurisdiction of Courts generally, of the ELRC, of the ELC and where the issues raised fall within the ambit of multiple Courts. He submitted that section 12 of the *Employment and Labour Relations Court Act (ELRC Act)* grants the ELRC jurisdiction to hear and determine all disputes relating to employment and including between an employer and an employee amongst others. He cited the case of *Abraham Nyambane Asiago v Barclays Bank of Kenya Limited* [2013] eKLR where the Court found that the claimant's Motion Application was properly before Court on a matter arising from the staff housing loan after termination of employment. That in the case of *Paramount Bank Limited v Vaqvi Syed Qamara & another* [2017] eKLR, on the jurisdiction of the ELRC over a claim for malicious prosecution, the Court of Appeal held that in addition to the claim for unfair termination, the claim relating to general damages for malicious prosecution and defamation flowed directly from the dismissal and was equally within the jurisdiction of the ELRC pursuant to section 12 of the *ELRC Act*.
6. Regarding the jurisdiction of the Environment and Land Court, the Claimant submitted that the same is outlined in section 13 of the *ELC Act* and that under section 13(2) of the *Act*, the ELC has jurisdiction to hear disputes relating to inter alia, "contracts, choses in action or other instruments granting an enforceable interest in land". He relied on the cases of *Lydia Nyambura Mbugua v Diamond Trust Bank Kenya Limited & another* [2018] eKLR and Mombasa Court of Appeal, Civil Appeal No. 83 of 2016 - *Cooperative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others*. The Claimant submitted that the ELRC has jurisdiction to issue the Orders sought in his Application dated 23rd May 2023 because the predominant purpose of the suit herein is based on the unfair and unlawful termination of his employment as can be noted from his Memorandum of Claim dated 19th April 2023. On this submission he referred the Court to the case of *Suzanne Achieng Butler & 4 others v Redhill*



Heights Investments Limited & another [2016] eKLR where the Court held that what is important in determining which court has jurisdiction is the “Predominant Purpose Test”. He submitted that it was clear his Claim had no dispute as to the ‘ownership, occupation or use of land’ for the Application dated 23rd May 2023 to be determined by the Environment and Land Court. He further relied on the case of *Boniface Lum Amunga Biko v National Bank of Kenya Limited* [2017] eKLR in which Mbaru J. held that with the court addressing the question of whether there was wrongful or unfair termination, the question of the payment of the loan facilities advanced to the claimant and the applicable interest rates raised in the Application before her would be dealt with.

7. It was the Claimant’s submission that the Court issued ex parte Orders on 24th April 2023 that the Respondents have not been complied with to date. That to prevent the Claim or suit from being rendered nugatory and to restrict further dealings on the Suit Property, he thus filed the Application dated 23rd May 2023. That in the case of *Mwambeja Ranching Company Limited & another v Kenya National Capital Corporation Limited (Kenyac) & 6 others* [2015] eKLR, Gikonyo J. observed that orders of inhibition envisaged under section 68 of the *Registration of Land Act* are in the nature of prohibitory injunction and act to preserve the suit property just as an interlocutory injunction would do. The Claimant concluded that despite the entire dispute raising crosscutting issues, the suit ultimately boiled down to the unfair and unlawful termination of his employment. He thus prayed for this Court to utilise the predominant purpose test, which is resolving the employer-employee dispute herein and to dismiss the 1st & 2nd Respondents’ Notice of Preliminary Objection dated 8th June 2023 with costs to the Claimant.
8. The preliminary objection herein is entirely misplaced. The Respondents assume that the suit is in respect to the title to and occupation of land which is a preserve of the ELC. The Claimant’s suit is on his employment with an ancillary relief being the security envisaged which impacts on the property in question. That can never be for the ELC as the Environment and Land Court does not have jurisdiction to determine employment issues. If the case was predominantly one on land and had an ancillary issue of employment of the shamba boy, that dispute would be rightly determined in its entirety before the environment and land court. Counsel should read Karisa Chengo and comprehend it. As the objection is misplaced it is dismissed with costs to the Claimant with the costs being on the higher scale.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER 2023

NZIOKI WA MAKAU

JUDGE

